

New Hampshire Supreme Court

November 10, 2005

ORAL ARGUMENT CASE SUMMARIES

CASE # 1

STATE OF NEW HAMPSHIRE V. BRUCE BLOMQUIST, No. 2004-0045

Attorney Andrew Winters for the defendant, Bruce Blomquist
Attorney Simon R. Brown for the State of New Hampshire

Legal Issues Presented:

Jury instructions on first-degree assault as a “lesser-included offense” to attempted murder; closing argument on the issue of insanity; defendant’s burden of proof.

- Did the trial court commit an error when it denied the defendant’s request to provide the jury with a first-degree assault instruction as well as an instruction for the more serious offense of attempted murder?
- Did the trial court commit an error when it denied the defendant’s request to make the last closing argument to the jury, even if it was just a short statement on the defense of insanity?

What is this case about?

(1) The defendant, Bruce Blomquist, was charged with four offenses: the attempted murder of George Frechette; first-degree assault and second-degree assault of Jolene Frechette; and burglary. Based on the evidence presented at trial, Blomquist’s defense lawyers wanted the trial judge to tell the jury that it could find Blomquist guilty of the lesser-included offense of first-degree assault if it did not agree on the attempted murder charge. The penalty for attempted murder is up to life in prison; the penalty for first-degree assault is a maximum of 15 years in prison.

(2) The defendant, citing a long history of alcohol abuse, pleaded not guilty by reason of insanity. He wanted his lawyer to present a final closing argument or at least a brief statement on the insanity claim after the State finished its closing argument. Ordinarily, the prosecutor is the last person to address the jury because the government has the burden of proving, beyond a reasonable doubt, that the crimes were committed.

In this case, however, because Blomquist claimed the insanity defense, his lawyers had the burden of proving that he was insane at the time of the attack. Because they would present their evidence on insanity after the government presented its evidence on the crimes, defense counsel argued that they should have the final word with the jury.

Procedural History

The defendant, Bruce Blomquist, was indicted by a Carroll County Grand Jury for four crimes arising from a knife attack upon George and Jolene Frechette. The defendant was charged with the attempted murder of George Frechette, the first-degree assault and second-degree assault of Jolene Frechette, and burglary. He pleaded not guilty by reason of insanity, citing alcoholism. Following a jury trial, the defendant was found guilty of all charges.

The trial court sentenced the defendant to 40 years to life in State prison for the crime of attempted murder. The defendant received a consecutive sentence of 7½ to 15 years in prison for first-degree assault of Jolene Frechette. A “consecutive” sentence means that Blomquist would begin serving the first-degree assault sentence after completion of the sentence for attempted murder. On the burglary conviction, the defendant was sentenced to a further 7½ to 15 years, also consecutive to the other two sentences. No sentence was imposed for the second-degree assault of Jolene Frechette.

This appeal to the Supreme Court followed, with the defendant claiming his convictions should be overturned because of error by the trial court judge during the proceedings. He contends the jury should have been given an opportunity to consider convicting him of first-degree assault of George Frechette, instead of attempted murder. He also contends that his lawyers, who had the burden of proving he was insane at the time of the crimes, should have been given the last word with the jury, not the prosecutors. The trial judge denied both requests.

Description of the Case

George Frechette lived next door to the defendant, Bruce Blomquist, when they were growing up in Albany, NH, and had known him for more than thirty years. The defendant’s parents eventually sold their home to the defendant’s sister, Diane Sweeney, and she and her husband became next door neighbors of the Frechettes.

Since 2001, Diane Sweeney and the Frechettes have been involved in a property dispute. According to the prosecution, the defendant continuously harassed the Frechettes over the placement of the shed on his sister's property. The defendant was warned by a Conway police officer to stay away from the Frechettes.

In the early morning hours of June 2, 2002, George and Jolene Frechette were asleep in bed when Jolene awoke to see the defendant standing over her husband with a knife. She screamed and threw herself at the defendant in an effort to get him away from her husband. The defendant stabbed Jolene Frechette in the upper right arm and in the left forearm. George Frechette told his wife to get their adult daughter and leave the house. The defendant repeatedly stabbed George Frechette. George sustained wounds to his face, his left hand, and his shoulder. At some point, the blade became detached from the defendant's knife. This enabled Frechette to attack the defendant, pushing him against the wall, choking him, slamming his head against a sliding glass door, and then picking him up and throwing him outside.

The Frechettes were taken by ambulance to Memorial Hospital. They both received emergency surgery for their wounds. When the police arrived at the Frechettes' home, the defendant was gone. He was found and arrested later that morning.

According to court records, the defense at trial did not contest the Frechettes' testimony about the incident. Instead, Blomquist contended that he was insane at the time of the stabbings and that his mental state had been "substantially altered" by a long history of alcoholism, including his "acute intoxication" for days prior to the June 2 incident.

A trial, Blomquist's lawyers presented testimony from friends and relatives about his long history of alcohol abuse as well as testimony from a psychologist who is an expert on the effects of alcoholism on the brain. She testified that Blomquist had "abnormal functioning of the frontal part of his brain." The State presented two experts: one was a neuropsychologist and the other was a psychiatrist, both of whom disputed the finding of the defense expert.

Before the jury began its deliberations, the defense made two requests of the presiding judge. First, they asked that the jury be allowed to consider first-degree assault as well as the attempted murder charge. Second, the defense asked the judge to vary the usual trial procedure and let them be the last to address the jury in closing argument solely on the issue of insanity. The trial judge denied the request for a first-degree assault instruction, and the routine order of closing arguments was followed, with the prosecution going last. Blomquist was convicted on all counts and is now serving up to life in prison.

On appeal, the defense contends that the trial court should have given a first-degree assault instruction because the same evidence that the prosecution used to prove Blomquist committed attempted murder, would also prove he committed the less serious charge of first-degree

assault. They also argue that New Hampshire trial courts “have a history” of recognizing first-degree assault as a “lesser-included offense” of attempted murder.

The prosecution argues that since the defense presented “little challenge” to the attempted murder charge, there was no reason for the judge to give an instruction to the jury on the lesser-included offense of first-degree assault. Moreover they contend that attempted murder requires different “elements of proof” than first-degree assault, so the assault charge cannot be viewed as within the legal definition of “attempted murder.”

The defense also argues that the trial court should have permitted the defense to close last or, at least, present a short rebuttal to the State’s closing, because the defense had to prove that Blomquist was criminally insane at the time of the attack. Usually, the prosecutor is the last person who talks to the jury in closing arguments because the State has the burden of proving that the crime occurred. Here, the defense had the burden of proving insanity and, therefore, the defense argues it would be “fair and just” to allow it to leave the “last impression” with the jury.

The State contends that the order of closing arguments in a case is up to the discretion of the judge and his decision should not be overturned unless there is a showing of “manifest abuse of discretion.” Moreover, the State notes that the defense waived its right to a “bifurcated” trial. In a “bifurcated trial,” the issues of guilt and insanity would have been decided at separate proceedings. The State asserts that the defense counsel’s strategic decision to have one trial weakens their argument the trial court should have let them close last.

***This summary was prepared by the Court Communications Office,
State of New Hampshire, Judicial Branch. 10/18/05***

New Hampshire Supreme Court

November 10, 2005

ORAL ARGUMENT CASE SUMMARIES

CASE # 2

JOHN SIMPSON v. DANIEL YOUNG, No. 2004-0700

Attorney Brian T. Stern for the appellant, John Simpson
Attorney Fred K. Mayer III, for the appellee, Daniel Young

Legal Issues Presented:

Landlord/tenant rights, violation of RSA 540-A:3, motion for contempt for violation of court order

- Did the trial court err in failing to find the defendant, Daniel Young in contempt for refusing to comply with its order of damages?
- Did the trial court error in failing to find the defendant's acts against the plaintiff were willful and thus prohibited under RSA 540-A:3?
- Did the trial court err in not ordering the defendant to pay enhanced damages for the violation of the statute?

What is this case about?

The tenant, John Simpson, sued the landlord, Daniel Young, in June 2004. He argued in district court that the landlord had turned off his gas, locked him out of his house, kept his personal belongings and took over the premises. He contended these acts were in violation of RSA 540-A:3 which is a statute that protects tenants rights. New Hampshire law clearly states the steps a landlord must take in order to evict a tenant. The law also allows the courts impose high monetary penalties if a landlord "willfully" violates a tenants rights.

Procedural History

After Simpson went to court in late June, a judge issued temporary orders requiring Young, to turn the gas back on, return the tenant's personal property and allow him access the premises. Simpson, went back to court in July, claiming Young had not abided by the court order. The court decided it wasn't clear whether the landlord ever knew about the June order, so he did not hold the landlord in contempt. The court

did order the landlord to pay the tenant \$1,000 in damages and ordered him to allow Simpson full access to the premises and to his belongings.

The tenant returned to court in August, claiming the landlord failed to pay the \$1,000 in damages and continued to restrict his access to the premises. The judge declined to hold the landlord in contempt and again directed the landlord to allow the tenant full access to the premises. The court took no action on payment of the damages. After the court declined to reconsider its findings, this appeal followed.

Description of the Case

In late June 2004, John Simpson, returned to a house in Barnstead which he had been renting with his wife. Simpson had left the premises in April while he was in the midst of a divorce. But when he returned to the property in June, after his wife moved out, he contends the landlord, Daniel Young, had taken over the premises unlawfully.

Simpson went to District Court and on June 30, 2004, a judge issued a temporary order directing Young to immediately give Simpson access to the premises. Young was not in court when this order was issued. The court directed Young to turn on the utilities and to allow Simpson free access to the property and to return his personal belongings. On July 8, sheriff's deputies delivered court papers containing these orders to Young's residence in Manchester.

On July 15, John Simpson went to district court again, claiming that despite the June 30 temporary court order, he still did not have access to the residence and had been living "house to house" without his belongings.

On July 29, a hearing was held before a judge in the Laconia District Court. Young told the court that when Simpson showed up in late June, he owed him rent, the property had deteriorated and that he did not want Simpson to move back in. According to a transcript of the court hearing, the judge advised Young that he couldn't "just throw people out like that" and that, even though Mr. Simpson may owe rent, there were eviction proceedings that had to be followed by law. Young told the court he had never rented a property before and didn't know the law. The judge told Young he had to let Simpson live in the house and he had to make sure he had access to all his personal property, and that utilities be provided. He also told Young he could not enter the premises without Simpson's permission except in an emergency.

The judge issued a final order on July 29 and ordered Young to pay Simpson \$1,000 in damages. The court declined to award additional "enhanced" damages of \$3,000 a day for each day of violation because the judge was not convinced that the landlord had been properly notified about the first set of court orders issued in June and he may not have known he was in violation.

According to the transcript of the hearing, the court told Young that if he didn't live up to the court order this time, he could be held in contempt, would be taken to jail and fined \$3,000 a day for each day Simpson was denied access to the property.

Young contends that all along, he was operating under the assumption that Simpson didn't intend to move back in so there was no violation of the landlord-tenant law on eviction.

On August 3, 2004, Simpson went to court again, filing papers saying that while he now had access to the house, he didn't have access to utilities and the garage. Simpson also contended that Young had left an "overdue rent" notice at the house, covering part of June and all of July. Simpson says Young told him said he planned to use his claim for back rent to "set off" the \$1,000 in damages imposed by the court back in June.

Simpson wanted Young held in contempt of court for not paying the \$1,000 in damages immediately and for violating provisions of the July 29th order.

On August 26, the court decided not to hold Young in contempt, but again ordered him not to enter the premises without Simpson's permission and told him not to interfere with Simpson's property. According to a transcript of the hearing, when Simpson asked the judge what he should do about Young's failure to pay the \$1,000 in damages, the judge said "Contact an attorney. I can't give you legal advice."

On September 7, Simpson went back to court, this time asking the judge to reconsider his Aug. 26 order. The judge declined, and Simpson filed an appeal with the New Hampshire Supreme Court.

In papers filed in the Supreme Court, Simpson claims he is owed as much as \$300,000 in "enhanced" damages from Young for "willful" violation of the landlord tenant law and for failure to make immediate payment of the \$1,000 damage award set forth in the court's final order.

Young contends he made an "honest mistake" in assuming Simpson wasn't coming back and he says it would be "absurd and unjust" for the court to order him to pay that much money. Young also argues that while he may have been in error in trying to "set off" the \$1,000 for back rent, that mistake does not trigger the provision for "enhanced" damages.

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State of New Hampshire, Judicial Branch. 10/18/05***

